The Solicitors' Journal

VOL. LXXXVII. **Saturday, October 23, 1943.** No. 43.

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1403.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £3, *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 4d., *post free.*

Current Topics.

Solicitors' Remuneration.

THE letter of Mr. ERNEST E. BIRD, President of The Law Society, to *The Times* of 14th October, should do something to dispel a hard-dying popular illusion as to the extent of the remuneration earned by lawyers. LORD WAVELL had said, at a luncheon in his honour at the Pilgrims Club on 16th September: "When we pay our schoolmasters at a much higher rate and our lawyers perhaps at a much lower rate, we shall really be making progress." Not unnaturally, as Mr. BIRD stated, this statement, which was widely published and broadcast, evoked much adverse criticism and some resentment from members of his branch of the legal profession, who in the main were underpaid, and whose remuneration, fixed as long ago as 1882, had only once been increased by 33⅓ per cent. at the end of the 1914–1918 war. He added that solicitors did a large amount of voluntary work for poor persons free of charge. The comments that his observations had aroused had been brought to the attention of LORD WAVELL, said Mr. BIRD, and he had immediately replied that his remarks had been misunderstood, and he had had no intention of suggesting in his speech that the rank and file of solicitors were or ever had been overpaid, and that in fact he knew that that was not the case. The publication of this prompt amplification and explanation of his lordship's remarks should do much to remove any misunderstanding. Anyone with the slightest knowledge of conditions in the legal profession knows that the rank and file of solicitors are in fact underpaid, and in many cases seriously underpaid, having regard to the proportion of their leisure time surrendered to the demands of work, not all of it, as Mr. BIRD pointed out, being remunerated at all. It is absurd to say, as an evening newspaper suggested, that the legal profession was taking itself too seriously in at once taking steps to remove a current misunderstanding. We know how vigorous the profession of journalism can be when it thinks that its position in the community is assailed.

The Juvenile Courts Again.

"IN this particular case it seems to me that there has been not merely a breach of the statutory rules, but a complete neglect of them. The result has been a lamentable neglect of the rules of justice and the principles of the administration of the criminal law." These words, among the most scathing ever uttered by a High Court judge with reference to any bench, were spoken by LORD CALDECOTE, L.C.J., in a case in the Divisional Court on 14th October with reference to the trial in a juvenile court of a small boy of eleven years of age and two others, aged ten and thirteen. "From the start of the case," LORD CALDECOTE said, "there seems to have been an assumption that the boys were guilty, without the necessity of proving it against them. It is surprising to find a detective-inspector apparently so ignorant of the criminal law as to ask the magistrates to take into consideration an account of other offences before ever they had heard of the case under consideration." Mr. Justice CHARLES' comments were no less strong. He spoke of "this lamentable bench" and "this strange bench," and said: "I have no doubt, and express the hope that any proper authority will see that in the City of Hereford little children under the jurisdiction of the juvenile court constituted for the city will not be in the grievous peril that at present they are being put in by the bench as at present constituted." Mr. Justice HALLETT said: "My uneasiness over this deplorable picture of what may happen in the juvenile courts is increased by the reflection that such proceedings take place behind closed doors. I wonder whether the absence of publicity may not conceal similar travesties of justice which are not brought to this court for correction." The two older boys concerned were ordered to be birched and were taken out of their parents' care and committed to the care of the education authority for seven years. The father of one of the boys, who had a right to be present at the birching, gave notice of appeal, but when a special messenger was sent to stop the birching it was found that the boy had already been birched, because, as was stated on behalf of the appellant, the birching had been ordered as soon as possible instead of, as provided by the statute, as soon as practicable. The language of the Divisional Court in relation to these proceedings was by no means too strong. Until there is a thoroughgoing inquiry into the actual methods used by children's courts all over the country and rigorous action taken to implement at once recommendations made by any committee that may be appointed, the public will share Mr. Justice HALLETT'S uneasiness at what may happen in juvenile courts. One of the most important aspects of the matter is that of publicity, and ss. 37 and 39 of the Children and Young Persons Act, 1933, will have to be closely scrutinised with a view to possible improvements.

Pension Appeal Tribunals.

THE Provisional Pensions Appeal Tribunals (England and Wales) Rules, 1943, of 1st October, 1943, made by virtue of powers conferred by para. 5 of the Schedule to the Pensions Appeal Tribunals Act, 1943, came into operation on 4th October, 1943, "on account of urgency." Among interesting points in the order is the provision that an appeal must be brought by someone acting on behalf of the person who would otherwise have been appellant where that person is under the age of sixteen or is prevented by mental or physical infirmity from acting on his own behalf. The order also lays down the proper forms of notice of appeal and provides for a statement of the case by the Minister, an answer by the appellant, and disclosure of official documents and information on application by the appellant within a specified time, or at the hearing, if there is reasonable excuse for not having applied within the specified time. The appellant is to receive not less than ten clear days' notice of the hearing date and there is provision for an appellant withdrawing the appeal or for the striking out of the appeal where the Minister decides the issue in favour of the appellant before the date fixed for the hearing. An appellant may conduct his case himself or may be represented by any person (whether holding any legal or other qualification or being a member of any War Pensions Committee, Association of Ex-Servicemen, Trade Union or other body or not) whom he may appoint to assist for that purpose. There are also provisions for the calling of medical, expert and other witnesses, and if the Tribunal are of opinion that a difficult medical or other technical question arises, they may take the opinion of an expert in such manner as may appear to them to be convenient. The Tribunal may also order a medical examination and report. Copies of any technical or medical opinions must be supplied to the Minister and to the appellant, or, in special cases, to the appellant's medical adviser, and the appellant and the Minister may each address the Tribunal on the subject of the opinion or report. The order also provides for the prompt communication of the Tribunal's decision to the appellant and the Minister, and the recording and proof of decisions. There are also provisions dealing with the cases where the appellant is unable to attend the Tribunal through physical or mental infirmity, or absence overseas, and for the continuance of an appeal with any appeal brought by the widow or dependents when an appellant dies before the decision of the appeal. Appeal by the Minister or the appellant to the High Court is by leave on a point of law. Travelling and subsistence allowances are allowable to appellants, and, where the appeal is successful, and also in other cases where the President certifies that there was reasonable ground for the appeal, compensation for loss of time at a maximum rate of seventeen shillings and sixpence a day. Provision is made for the payment of the appellant's costs of appealing to the High Court where leave is given to the appellant or to the Minister to appeal to the High Court, as well as the reasonable costs of applying for or opposing leave to appeal. The President must make arrangements for the use of interpreters at proceedings before Tribunals in Wales. Sittings of the Tribunal are to be held in public, subject to any request by the appellant for a private hearing, as well as to certification by a Minister that it would be contrary to the public interest or security to disclose the whole or part of a particular document.

Pay as You Earn.

THOSE who were inclined to criticise the proposals as to a "pay as you earn" scheme of income tax collection contained in the Wage Earners' Income Tax Bill, on the ground that they did not go far enough, will derive some satisfaction from the speeches of the Chancellor of the Exchequer in the debates on the Bill in the Commons during last week. He said that the weekly wage-earner often lived of necessity on a weekly budget, and it was especially desirable in his case, not only that the tax should be assessed on current earnings, but that it should be collected from current earnings. He would not seek to contend that the salary earner never suffered from fluctuations or instability, but these were nothing like so common as in the case of weekly wages, because for the most part the salary earner had a regular income to the continuance of which he could look forward. Moreover, so far as salary earners received increasing incomes over the course of their career, the present system of assessment on the preceding year's income operated somewhat to their advantage. The change would bring any increases of income into assessment one year earlier in every case. The salary earner was also safeguarded against hardship caused by the serious drop in his income by the provision of the present law, which allowed a reduction of assessment from the preceding year basis to the current year basis where the fall in income exceeded 20 per cent. Any wholesale extension of the plan would involve other considerations. In the case of large incomes the arrears of tax outstanding could not be lightly foregone in the crisis of a great war. His mind was not closed, however, to the possibility of reconsidering the scope of the scheme. He had been giving very serious consideration to the case of salaried workers on the lower salary ranges. If the extension that he indicated were made the simple principle would have to be adopted for every individual taxpayer. "Once a 'pay as you earn,' always a 'pay as you earn'." He recognised that a strong case might be made out for early action in the case of the lower salaries, and if the opinion of the House as expressed in debate should be in favour of such a concession, he would be quite ready to come forward with a suitable proposal on committee stage. In answer to a question by a member, Sir JOHN ANDERSON said that if the House would not hold him to every detail, what he had in mind was that the line should be drawn at a salary or equivalent emolument on a whole-time basis, excluding such incidental items as overtime, of £600. On that basis, the loss of revenue, after taking into account post-war credits, but not taking into account possible bad debts, would be of the order of £7,000,000. In the debate on 21st October, confronted with demands from members of all parties for an extension of the scheme to all Sched. E earnings, Sir JOHN promised to reconsider the whole matter, and an amendment to this effect was accordingly withdrawn.

Police as Advocates.

IN our "Current Topic" on this subject in THE SOLICITORS' JOURNAL of 25th September (*ante*, p. 340) it was stated that the power of the police to conduct complaints and informations before the magistrates is derived from ss. 12 and 14 of the Summary Jurisdiction Act, 1848. The authority on which this statement is based is *Duncan* v. *Toms*, 51 J.P. 631, and it is interesting to find that a correspondent in a recent issue of THE SOLICITORS' JOURNAL (*ante*, p. 361) is unable to agree with the effect of that case as stated in the "Topic." It is none the less good law and it was further clearly held that no distinction can be made between an information laid by a private informant or complainant and an information laid by a public officer in matters appertaining to him in his official capacity. The practice, as many judges have already observed, and as was distinctly stated in the "Topic," is to be deprecated, but it certainly cannot be impugned on the ground of legality, as our correspondent seems to think it can. It is also interesting to note our correspondent's reason for differing from the conclusion reached in *Duncan* v. *Toms*, *supra*, viz., that s. 12 of the 1848 Act "obviously only applies to private prosecutors and not to the police, who are really district or local public prosecutors." The answer to this is that the contrary was obvious to the learned judges who decided *Duncan* v. *Toms*, *supra*, who held that there was no distinction between the police and the public in this respect. If it be true that the police are district public prosecutors, that in itself is no reason for reading into the statute words that are not there. The question of the exact position of the police in "police courts" is interesting. Among the duties of the mediæval township were those of raising the hue and cry and presenting criminals at the courts with jurisdiction to try them (Pollock and Maitland, "History of English Law," vol. I, 2nd ed., p. 564). An ordinance of 1252 (*ib.*, p. 565) first mentioned constables, and decreed that one or two of these officers should be appointed in every township. Later a practice grew of the appointment of petty constables by justices, and this came to be regarded as part of the common law ("Burn's Justice," *Constable*), until the justices were given a statutory power in 1662 (13 & 14 Car. 2, c. 12) to appoint petty constables. The constables thus came under the control of the justices, who regarded them as their own officers to execute warrants and obey orders generally. According to "Blackstone," the constable appointed watchmen, at his discretion (*Comm.*, vol. I, pp. 356–7). The first regular force in the Metropolis was established by the Metropolitan Police Act, 1829, although the city had had a small force since 1736, and it is interesting to see that the Metropolitan Police Courts Acts of 1839 and 1840 established "police courts" and "police magistrates." (Incidentally an Act passed in Queensland, Australia, in 1941, changed the designation of "police magistrate" to "stipendiary magistrate.") At the same time forces were established throughout the country and the municipal corporations (1835), parishes (1842), and county councils (1839) came into line. Under the County Police Act, 1839, the chief constable was appointed by the justices in quarter sessions with the approval of the Home Secretary and could be dismissed by them. The chief constable appointed the other constables, subject to the approval of two or more justices in petty sessions. By the Local Government Act, 1888, these powers of the justices were transferred to the standing joint committee consisting of an equal number of representatives from the county council and of quarter sessions. It is still the duty of the police to obey all lawful commands of the justices having jurisdiction in the county or borough in which they act. It therefore appears that there is some ground for the conclusion by our correspondent that the police are district public prosecutors in the police courts. It is not surprising that the learned author of "Justice in a Depressed Area" recommends "the complete severance of the magistrates . . . from the police" (p. 84), and that judges have in the past condemned the practice, legal though it may be under s. 12 of the 1848 Act, of the police acting as advocates.

Better Housing.

THE speech by the Minister of Health at the conference of the National Housing and Town Planning Council on 8th October, 1943, was both realistic and sanguine. He said in the last few months local authorities had drawn up preliminary programmes to provide for the first instalment of new houses to be built as quickly as the resources of the building industry permit and as soon as new building can be resumed. These already covered 150,000 houses and programmes were still flowing in. Nearly 9,000 acres of the land which would be needed were already owned by the local authorities, and the proposals so far received provide for the purchase of another 8,000 acres. After discussions on our present and short-term housing difficulties with a conference of representatives of the associations of local authorities and of the London County Council, the Government had accepted the principle that after the demands for building for war purposes have been met, housing should have the first call on immobile building labour. His colleagues—the Secretary of State for Scotland, the Minister of Labour and National Service and the Minister of Works—had now worked out a scheme about which he would send a circular to local authorities. The basis of the scheme was the concentration of the available labour and materials on essential housing work and the exercise of discretion by local authorities—whose task it will be to decide in the light of the housing conditions of their district what housing work should be done and which of it should be done first. In planning for post-war building, it was important to consider whether we could get a larger number of satisfactory houses more quickly by supplementing ordinary brick and timber construction (that had proved itself over the past) with alternative methods, utilising different degrees of pre-fabrication. The Minister awaited with interest the findings of the Inter-departmental Committee appointed last year to examine all practicable methods and systems. Two or three local authorities were already experimenting with new methods of construction. If we profited from the bitter experience of 1919, and if we learn the lessons of the past few years of the peace, and, if private enterprise, local authorities, and the Ministry of Health all went forward together on plans which they had worked out together, each appreciating the others' capacity and difficulties, then, the Minister had no doubt that they would deliver the goods, and be able, in the first ten to twelve years of the peace, to make good war damage: to overtake the arrears of works of ordinary maintenance and repair, and to build the three to four million houses which were required if every family who so desired was to have a separate house.

Recent Decision.

IN *Point of Ayr Collieries, Ltd.* v. *Lloyd George and Others*, on 11th October (*The Times*, 12th October), the Court of Appeal (THE MASTER OF THE ROLLS, GODDARD and DU PARCQ, L.JJ.) held that the reasons for the appointment by the Ministry of Fuel and Power, acting under reg. 55 (4) of the Defence (General) Regulations, 1939, of a controller of the appellant colliery company could not be inquired into by the court in the absence of evidence that that decision was not made in good faith. THE MASTER OF THE ROLLS said that the Minister was not bound to disclose the grounds which had influenced his action, and the court had no power to inquire into them.

Educational Reconstruction and the Legal Profession.

THE recent proposals of the Government for educational reconstruction (Cmd. 6458–1943) are likely to have a considerable effect, both direct and indirect, on solicitors and their clerks. There are four proposals contained in the White Paper which will be of vital interest to the profession if they are put into effect—the raising of the school-leaving age, the extension of secondary education, compulsory part-time education and increased access to the universities.

One obvious result of the raising of the school-leaving age will be to deprive solicitors of the services of office boys under the age of fifteen and, before long, of those under sixteen. This will mean either that a youth of sixteen will have to start his career by the time-honoured occupation of stamp-licking before passing on to higher things, or that the least intelligent youths will drift into the stamp-licking business and stay in it more or less permanently. At present a boy of intelligence expects to have passed that stage by the time he reaches the age of sixteen; if he has stayed at school until that age there is reason to hope that he will have learned enough to have qualified for something better than the office-boy's stool. One result may be to force solicitors to introduce more up-to-date methods of office organisation; a few years ago there were still and probably still are firms of the very highest repute which use copying presses, apparatus which it is understood have long been obsolete even in the Civil Service. However that may be, improvement in the educational standard of the nation is bound to lead to a reluctance to enter the less interesting jobs at a later age than at present.

Not only is it intended that the quantity of the education received shall be increased, but also that its quality shall be improved. At present, boys coming into solicitors' offices may have had the beginnings of a secondary education or the end of an elementary education, according to whether they have been to secondary schools or senior schools between the age of eleven and the time when they begin work. The raising of the school-leaving age, combined with an enlarged and improved system of secondary education, ought to provide boys who are not only more intelligent and more knowledgeable, but also more widely educated than heretofore. The limited horizon afforded by the prospect of becoming a conveyancing or litigation clerk, later an unadmitted managing clerk and in the distant future an admitted clerk, is likely to appeal less and less to boys entering solicitors' offices after enjoying the benefits of a secondary education even up to the age of sixteen. There will, therefore, be a tendency for the more ambitious and intelligent to turn to professions and occupations where the prospects are brighter unless the solicitors' profession is opened to ability alone instead of to ability plus money, which in too many cases is the fact at present.

So far, only those proposals which do not interfere with the workings of an office have been dealt with. The next point is one which may very well arouse considerable opposition and apprehension in the minds of solicitors, in particular in small firms. The proposal referred to is that to introduce compulsory part-time education during working hours for all boys and girls up to the age of eighteen. Probably the majority of solicitors' clerks already attend evening classes after their day's work is done. It is not apparently intended that this system of part-time education should replace evening classes as it is not proposed to devote the whole of the time allotted to vocational training, even if it were sufficient. The White Paper stresses that basic elements must be included for all alike: physical training, training in the understanding of the written and the spoken word, and some education in the broad meaning of citizenship are subjects which are suggested. It is only when basic requirements have been met that time is to be given to purely vocational training. As work in a solicitor's office is not a blind-alley occupation, there will never be any lack of subjects to teach in that portion of the time given over to vocational training, and there is no doubt that the whole system will result, if it is intelligently and efficiently organised, in the production not only of more efficient solicitors' clerks but also of better citizens. That is taking the long view; many solicitors will, not unreasonably, take the short view and look forward with some disquiet to periods of absence due to education in citizenship as well as to the traditional obsequies of grandmothers. Such apprehensions are not entirely imaginary. In a large office there should be few or no difficulties except those created by employers, and it ought to be simple to arrange rosters of duty. In small offices the junior clerk often bears the heat and burden of the day alone, and it is clear that some inconvenience will result: this must be accepted.

At first, attendance is to be limited to one day a week or its equivalent; later it may be possible to put attendance on a half-time basis. As stated above, some of this time will be available for the teaching of vocational subjects, which, in the case of solicitors' clerks, will be legal subjects. The question then arises of the responsibility for teaching law; it is a specialised subject which will be required by a small minority of those attending the young people's colleges which it is proposed to establish and it will require solicitors to teach it. It is suggested that The Law Society should assume responsibility for the legal education of solicitors' clerks from the outset. The detailed workings of any scheme will be difficult. There is no problem in London nor in any of the large concentrations of population. Where the obstacles will arise is in the smaller provincial towns where there may be only three or four solicitors' clerks. It will be necessary either to employ a tutor with a circuit of half a dozen towns or to arrange for a local solicitor to give the necessary instruction. The second proposal will be feasible only if the interest and enthusiasm of the profession as a whole are aroused.

The last subject of interest to the profession which is discussed in the White Paper is that of access to the universities. Only two paragraphs are devoted to this very important subject and they are clearly included rather in order to show that the matter has not been overlooked than to set out any detailed proposals. Any increased output from the universities will inevitably increase the number of potential solicitors, and it is to the interest of the profession (and of the public) that the ablest men are attracted to it.

To sum up, all these proposed measures will have the effect of improving the intellectual standards of our nation; in the inconveniences and sacrifices which are necessary to attain that improvement the legal profession must be willing to share to the full. A cynic has described education as the casting of imitation pearls before genuine swine; with care we may be able to include a few genuine pearls while it has happened at least once that what appeared to be swine were in reality Odysseus' sailors under a spell.

A Conveyancer's Diary.

Charging Clauses.—I.

EQUITY requires trustees to give their services for nothing. That is the basic rule, and all cases where the position is otherwise arise by way of exception from it. One such exception is that the Public Trustee is empowered by the Public Trustee Act, 1906, to make charges. Another is the provision of the Trustee Act, s. 42, that "where the Court appoints a corporation, other than the Public Trustee, to be a trustee, either solely or jointly with another person, the Court may authorise the corporation to charge such remuneration for its services as trustee as the Court may think fit." Again that is the so-called rule in *Cradock* v. *Piper*, 1 Mac. & G. 664, under which a solicitor-trustee, who has a co-trustee, may act for the trust in litigation and may receive profit costs not exceeding the amount of the costs which would have been incurred by the co-trustee. But, of course, much the commonest way in which the exception arises is for it to be created by an express provision in the instrument creating the trust. There is a stock form for these clauses which appears to be descended from one framed by the late Mr. Wolstenholme. Thus, in *Re Fish* [1893] 2 Ch. 413, the clause was as follows: "And I declare that the said A B, and every other person to be hereafter appointed a trustee of my will who may be a solicitor and professionally employed in matters relating to the trusts of my will, shall be entitled, and is hereby authorised to retain and receive out of the trust premises, his usual professional costs and charges, as well by way of remuneration for business transacted by him or his partner or partners personally, or by them or their clerks or agents (including all business of a kind not strictly professional, but which might have been performed, or would necessarily have been performed in person by a trustee not being a solicitor), as costs and charges out of pocket in the same manner as if the said A B, and every other such person as aforesaid had not been a trustee or trustees hereof, but had been employed and retained by the trustees hereof as solicitor in the matter of the trusts." According to an interlocutory observation of Kay, L.J., this form was one of Mr. Wolstenholme's, and was intended to get round the decision in *Harbin* v. *Derby*, which was that a form for a solicitor-trustee to charge for professional services does not entitle him to charge for doing anything which a non-professional trustee could do personally. The question in *Re Fish* was whether the solicitor-trustee was entitled to receive profit costs for his semi-professional and non-professional activities on behalf of the trust, and the Court of Appeal held that he could do so. They also held that, in the absence of a special provision, the trustees cannot with finality decide what is to be paid to their co-trustees, but that these payments are always open to taxation and review. Kay, L.J., added some words to the effect that the court would look jealously at the solicitor-trustee's conduct in a case where he had himself drawn the deed which includes the charging clause. A rather shorter version of the clause had in fact been before the court ten years earlier in *Re Ames*, 25 Ch. D. 72, a version which to the modern ear sounds more elegant, but whose author is not stated to have been so distinguished a conveyancer. North, J., reached a similar conclusion upon it.

The other important case is *Re Chalinder and Herington* [1907] 1 Ch. 58. Here the clause was much shorter, viz.: "I direct that my executor and trustee X Y shall be the solicitor to my trust property and shall be allowed all professional and other

charges for his time and trouble notwithstanding his being such executor and trustee." The question was whether X Y could recover profit costs for any but strictly professional work. Warrington, J., held that he could not do so, notwithstanding that the words were " professional *and other* charges for his time and trouble." The learned judge said that the governing consideration in approaching the construction of the clause was that it started with a direction that X Y " shall be the solicitor to my trust property." Those words standing alone would not entitle the person in question to charge at all. The rest of the clause appeared to be inserted to allow the solicitor-trustee to charge for his activities as solicitor to the trust under the direction that he should be employed as such. That was to say, the activities to be paid for were those for which an ordinary trustee would be allowed any payments which he might make to a solicitor. The words used were narrower than those in *Re Fish*. The reference to " professional *and other* " charges was intended to include those almost but not quite professional activities for which a lay trustee could properly use and pay for the services of a solicitor.

In view of *Re Chalinder and Herington*, it is important for the draftsman to consider how wide he means the charging clause to be. Nowadays one sometimes finds a reference to charging only for professional services, while in other cases words are added to include payment for such things " as a trustee not being a person engaged in any profession or business could have done personally." The form which is given in a number of places in vol. 3 of " Prideaux " follows *Re Ames* in referring to " time expended and acts done . . . in connection with the trusts hereof, including acts which a trustee not being in any profession or business could have done personally." It should be realised that these words are as wide as they can be; to allow a trustee to charge for " time expended " on matters which a lay trustee could have dealt with personally appears to me to be impossible to distinguish from a provision that the trustee shall be entitled to charge for his trouble; that is to say, it amounts to a complete ouster of the basic rule. I am not at all sure that the normal settlor or testator means to do anything so lavish for his trustees. It is difficult to generalise, but I should have thought that a good many settlors (who think of the point at all) would have in mind that the professional trustee needs a charging clause because without it he cannot be paid for giving professional advice. I doubt whether most settlors desire to permit solicitor-trustees to charge for every single thing they do. Some, no doubt, feel that the trust will be run from the solicitor's office; he will have all the facilities for doing so, and therefore ought to be paid. But the point seems to be one which ought to be explained to the lay client. Moreover, although there is in the case of a *solicitor*-trustee something to be said for the theory that the trust will have the services of his office or staff, there is no reason at all to think that any other sort of professional trustee, or trustee engaged in " business " (a very wide word), is going to provide such facilities. But the present standard clause covers any such trustee and not a solicitor-trustee only. For instance, I do not find it easy to believe that the average testator will want any of his trustees who happens to be a medical practitioner or a clergyman or a soldier or an actor (all of whom are " professional " men, using that word in its narrow sense) to be qualified to make a charge for every letter which they write. Still less can that be the real intention in regard to persons engaged in " business," for example, tallow chandlers or horse-copers.

The trouble is that the modern forms tend to go too far. All but one of the reported cases which I have so far found have been about solicitors. Their position is unlike that of anyone else; they are able to provide facilities for running the trust, their quasi-professional advice is quite as useful to the trust as their strictly professional advice, and their bills are subject to taxation anyhow. No doubt it is not reasonable to confine the solicitor-trustee to narrowly professional charges. Hence the inclusion of the words about " time expended " on work which a lay trustee could have done personally. It seems then to have occurred to someone that a land agent or a stockholder or a member of the bar who is a trustee can often be useful as such to the trust, and so the words about " a person engaged in any profession or business " were introduced. But that goes too far, because (i) the three classes whom I have mentioned are about the only classes who are often any use at all to trusts, and (ii) even they are generally only useful in their own particular way and not for the general day-to-day administration.

I mentioned above that I had found one relevant case not exclusively concerned with solicitor-trustees. It is *Clarkson* v. *Robinson* [1900] 2 Ch. 722, where an architect, a manager of one of the testators' businesses, an " out-door manager " and steward, a chartered accountant and a solicitor were executors of the will of a millionaire who was engaged in all sorts of money-making activities. They acted, very efficiently, as a kind of board of directors, holding regular meetings. But their claim to remuneration was rejected. The charging clause provided that " any solicitor or other person engaged in any profession or business shall be entitled to charge and be paid all usual professional or other charges for any business done by him or his firm in relation to the management and administration of my estate . . . whether in the ordinary course of his profession or not, and although not of a nature strictly requiring the employment of a solicitor or other professional person." The charges asked for were for the general expenditure of time and trouble, not, for instance, by the architect for designing buildings. Buckley, J., held that the claim could not be allowed. The clause related to professional acts only, whether or not they were in the *ordinary* course of the trustees' business: it differed from that in *Re Fish*, where the emphasis was on time expended. In a big case, it seems highly desirable to have a clear provision providing salaries for the trustees.

But, for ordinary cases, I venture to suggest that something on the following terms might more nearly express the intention of the average testator: " I declare (i) that any trustee of this my will who is a solicitor may be employed as solicitor to the trust and while so employed shall be entitled to charge for all work done by himself or his partner or partners or his or their clerks in connection with the administration of the trusts hereof whether or not a trustee not being a solicitor could have done such work personally; (ii) that any trustee hereof being a person engaged in any profession or having any special knowledge or training may be consulted by my trustees in any matter where they would be justified in consulting any other person engaged in such profession or having such special knowledge or training and may be paid all his proper charges in respect of services rendered to my trustees arising out of such consultation."

Correspondence.

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL.*]*

Damage by Animals and Others.

Sir,—I have noted with interest the letter of Mr. G. W. R. Thomson in your issue of 9th October in which he puts forward some certainly original views on the law about damage by animals, children and employees. Mr. Thomson says that *Hughes* v. *Williams* [1943] 1 K.B. 574 is " absolutely incomprehensible " to him. As you know, I have ventured some observations on this matter in three recent " Conveyancer's Diaries," and I have some sympathy with the difficulties of Mr. Thomson. But I do not think that *Hughes* v. *Williams* is incomprehensible. It was an ordinary action for damages for negligence: the damages claimed no doubt included repairing the motor car and something for general damage. The action failed, because one cannot show negligence in the performance of a duty if one cannot show that there is a duty. Rightly or wrongly, the present doctrine is that there is no duty to keep one's animals from straying on to the highway (*Heath's Garage, Ltd.* v. *Hodges* [1916] 2 K.B. 370).

The trouble about Mr. Thomson's proposed remedy is that it begs the question and goes too far. We all agree that if A damages B he ought to compensate him. But the crux is to decide at what point A becomes responsible for the injurious act. In *Hughes* v. *Williams* an accident occurred between A's horses and B. Unless that is to be a doctrine of absolute liability for all the acts of one's animals, whether tame or savage, it is not possible to predicate that in such a case A himself *did* damage B. In fact, Mr. Thomson proposes that everyone should become an insurer to the public against all the acts of his employees (whether or not in the course of their employment), children under sixteen and domestic animals, just as if all those persons and useful animals were tigers or snakes. Obviously, if such a standard of liability were enacted no one would want to have employees, domestic animals would mostly be destroyed, and children would not be welcome. Is this the best way of dealing with the " problems " of full employment and of the birth rate?

18th October. YOUR CONTRIBUTOR.

Books Received.

Notes on District Registry Practice and Procedure. By THOMAS S. HUMPHREYS, Clerk in Charge, District Registry, Birmingham. Sixth Edition, 1943. Crown 8vo. pp. viii and 84 (with Index). London: The Solicitors' Law Stationery Society, Ltd. 9s. 6d. net.

Soviet Justice. By RALPH MILLNER, barrister-at-law. With an Introduction by D. N. PRITT, K.C., M.P. 1943. pp. 61. London: Published for the Haldane Society by W. H. Allen and Co., Ltd. 1s. 6d. net.

Courts Emergency Powers Practice. By JOHN BURKE, Barrister-at-law. Second Edition, 1943. Demy 8vo. pp. iv and (with Index) 121. London: Sweet & Maxwell, Ltd. 10s. 6d. net.

Trading with the Enemy. By F. C. HOWARD, M.A., Solicitor of the Supreme Court. 1943. Royal 8vo. pp. xix and (with Index) 119. London: Butterworth & Co. (Publishers), Ltd. 10s. 6d. net.

Insanity in the Criminal Law in Australia. By JOHN V. BARRY, K.C. English Studies in Criminal Science, Pamphlet Series. 1943. pp. 14. Cambridge: Squire Law Library. 2s. net.

Landlord and Tenant Notebook.

Master and Servant as Landlord and Tenant.

I REMARKED, in the "Notebook" of 15th May last (87 SOL. J. 171), on the fact that the present war had tended to produce more disputes about whether the Rent, etc., Restrictions Acts applied to a particular relationship than disputes about their effect if they did so apply. In this connection a short review of authorities dealing with the question "when is a servant a tenant?" may be useful. For many employers who are anxious to recover possession of premises occupied by servants or ex-servants may find it more profitable to seek to establish a licensor-licensee relationship than to embark upon proving the several matters contained in para. (*g*) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, besides satisfying the court that it is reasonable to make the required order.

Bertie v. *Beaumont* (1812), 16 E. 33, is an authority which has influenced many later decisions. The action was for obstructing a right of way to a cottage, and the plaintiff has accordingly to establish that he was in occupation of at least part of that cottage. It was, to use modern parlance, divided into two separate and self-contained dwellings. Each of these had formerly been let to different tenants, and one still was admitted to be let. The other was occupied by a labourer in the plaintiff's service who deposed that he paid no rent, but had less wages by £5 a year, on account of his paying no rent in money; and was only a weekly servant. Five pounds a year was the rent at which the premises had been let to the previous occupier. It was held at first instance that the labourer was in effect a tenant at £5 a year, but, making a rule *nisi* absolute, Lord Ellenborough said that any person circumstanced as the plaintiff might allow a man less wages on account of the convenience; no rent had ever been paid, he had not been tenant before his service commenced. His occupation, being *merely* that of a servant, was in law that of the master.

In view of the somewhat sketchy nature of this judgment, it is right to mention that in the course of the hearing his lordship interposed the following observation: "The argument here goes this length, that if the gate-keeper of a gentleman's park, occupying the lodge, or a gardener an outhouse in the garden, hired as a yearly servant, were dismissed from the service for misconduct, they would still have a right to continue their occupation of the respective houses as tenants, till the tenancy were legally put an end to; for in all such cases they would have less wages on account of the convenience of their occupation."

This shows that not merely the fact that the occupant of the half-cottage was a servant, but also the fact that he was a weekly servant, may have had something to do with the refusal to recognise the "less wages by £5 a year" as constituting rent. Nevertheless, it would have been more satisfactory if reference had been made to the general principle recently stated by Lord Greene, M.R., in *Booker* v. *Palmer* (1942), 87 SOL. J. 30 (C.A.): "whether parties intend to create between themselves the relationship of landlord and tenant must in the last resort be a question of intention, and the law did not impute intention to enter into legal relationships where the circumstances and conduct of the parties negatived any intentions of the kind." For what Lord Ellenborough in effect did was to infer from the labourer's evidence—engaged as a weekly servant, rate of payment £5 a year less because no rent for half-cottage—that it never entered his or his employer's head that the one was accepting, the other granting, an estate by demise.

Doe d. Hughes v. *Corbett and Derry* (1840), raised the point by an argument whether a document was merely a service agreement or was a lease which should have been stamped as such. It provided that one of the defendants was to manage the stock and crop on the farm he had recently sold to the lessor of the plaintiff, and his wife to manage the dairy, the employer "allowing and paying" him the sum of 12s. a week and "allowing him and his family to reside and have the use of the dwelling-house and furniture therein, free of rent." Parke, B., agreed that the words "allowing him and his family to reside and have the use . . ." *might* import a lease, but thought, taking the whole of the instrument together, they must be taken "as a reward for services."

Again, this does not seem to hit the nail quite on the head: there is no reason why a master should not engage a servant under a contract by which he undertakes both to pay wages and to grant a tenancy of specified premises.

Another case which can be called provocative is *Dobson* v. *Jones* (1844), 5 Man. & G. 111, in which a surgeon attached to Greenwich Hospital and occupying quarters (which he furnished) provided by the hospital authorities was held not to be entitled to a tenant-occupier's Parliamentary vote. The court stressed the fact that the appellant was *required* to occupy the premises with a view to the better performance of his duties. If he lived there because he had to, that does, one will agree, tend to negative an intention to create the relationship of landlord and tenant; but it is, I submit, going too far to say that the two sets of circumstances are incompatible. I have suggested that a servant might accept a tenancy as part of the remuneration for his services; by parity of reasoning, a master might engage a servant on consideration of his undertaking to perform specified services and accept a tenancy of specified premises.

The three authorities so far mentioned decided the question under discussion indirectly only, i.e., *via* a claim for obstructing a right of way, a revenue point, and a franchise appeal respectively. But *Collison* v. *Warren* [1901] 1 Ch. 812 (C.A.), was an action for wrongful dismissal by the ex-manager of a hotel, in which the defendant sought an interlocutory injunction to restrain the plaintiff from interfering with or disturbing the defendant in his possession and occupation of the hotel. The plaintiff did not claim any tenancy, but he relied on a provision of the service agreement by which he and his wife and family should during his engagement be entitled to reside and board on the premises: and the relief sought by the defendant was, as Buckley, J., said, equivalent to a mandatory order upon him to go out. The plaintiff's arguments were that the relief sought was not incident to or arising out of that sought by the plaintiff, and that ejectment should have been brought: they were rejected both at first instance and on appeal.

The above case, while showing that a mere servant has no security of tenure, admittedly fails to deal with the question "when is a servant a tenant," for no such issue was raised. It has been raised in two cases in order to support a claim to such protection as the Rent, etc., Restrictions Acts can afford, namely in *National Steam Car Co.* v. *Barham* (1919), 122 L.T. 315, and in *Ecclesiastical Commissioners* v. *Hilder* (1920), 36 T.L.R. 771. In neither, unfortunately, was there a clear-cut decision holding that the servant was also a tenant, but in the first-mentioned case, which was a claim for possession of premises occupied "rent free, the value of the accommodation taken into consideration while fixing his [the employee's] remuneration," A. T. Lawrence, J., said that the Acts did not apply where the occupation was that of a servant of the landlords who occupied premises for the purposes of his employment with the landlords: which was, roughly, the position at that time. In *Ecclesiastical Commissioners* v. *Hilder* the defendant had also occupied premises "rent free," as a caretaker, and his employment had been determined, Avory, J., thought that if he was a tenant, his tenancy was a tenancy at will and as such outside the Acts. It was mentioned in both cases that the Acts did not apply to "rent free" tenancies, but little was done to exploit the possibilities of considering services as rent and the servants did not, as did the labourer in *Bertie* v. *Beaumont*, *supra*, attempt to value the accommodation on those lines.

To-day and Yesterday.

LEGAL CALENDAR.

October 18.—James M'Lean, the gentleman highwayman, was hanged at Tyburn in October, 1750. Horace Walpole, who had just escaped being shot dead by him in a hold-up in Hyde Park the previous November, mentioned him several times in his correspondence. In a letter dated the 18th October he wrote: "Robbing is the only thing that goes on with vivacity, though my friend M'Lean is hanged. The first Sunday after his condemnation, three thousand people went to see him; he fainted away twice with the heat of his cell. You can't conceive of the ridiculous rage there is of going to Newgate; and the prints that are produced of the malefactors and the memoirs of their lives and deaths, set forth with as much parade as—as—Marshal Turenne's—we have no generals worth making a parallel."

October 19.—On the 19th October, 1685, there were tried at the Old Bailey on charges of high treason, Henry Cornish, an alderman of London, John Fernley, a barber, William Ring, a tailor, and Elizabeth Gaunt. Cornish, a Whig prominent in City politics, was accused of complicity in the Rye House plot in the reign of Charles II. The others had harboured fugitive rebels after the failure of Monmouth's rising. All were found guilty and Cornish, Fernley and Mrs. Gaunt were executed. The Recorder, in passing sentence, said: "I reckon harbourers to be worse than traitors themselves; they are like receivers to thieves. There would not be so many traitors if there were no harbourers."

October 20.—On the 20th October, 1862, Catherine Wilson was hanged at Newgate for the murder of Mrs. Soames, a widow, of 27 Alfred Street, Bedford Square, by poison. The prisoner was lodging at her house when she was taken ill suddenly with sickness and pain and vomiting. She died in three days, and in the interval it was the prisoner who looked after her, administering medicine and drinks. There was an inquest, and a verdict of death from natural causes was returned. After the funeral the prisoner claimed and received from the family £10, which she said she had lent the deceased. This was in 1856, and it was more than five years before Catherine Wilson was unmasked. Her acquittal on a charge of attempted poisoning with oil of vitriol brought to light her connection with a whole series of suspicious deaths of the same kind, and investigation turned suspicion into certainty. She remained calm and indifferent even in the face of 20,000 persons who witnessed her execution. No effort was made to obtain a reprieve. No relative visited her under sentence, only one charitable acquaintance.

October 21.—In about 1732 Mary East, a girl of sixteen, betrothed to a highwayman, had the sorrow of seeing her lover

transported for life. Vowing herself to celibacy she joined with another girl, likewise crossed in love, and together they set out to seek their fortune with £30 between them. Mary was disguised as a man, and as husband and wife they took a little public-house in Epping. They prospered and took a better one in Limehouse Hole. They prospered further and bought the "White Horse" at Poplar, and after that several more houses. Mary, who passed under the name of James How, became prominent in local affairs and lived happily till about 1750, when an acquaintance, who had known her as a girl, started to blackmail her under threat of disclosure of her sex. In 1766 the blackmailer embarked on a more ambitious scheme, enlisting two men, one of whom posed as a constable, to charge her with a robbing thirty-four years before and threaten her with the gallows. The plot was defeated and on the 21st October William Barwick, one of the conspirators, was condemned at Hick's Hall to stand three times in the pillory and suffer four years' imprisonment in Newgate.

October 22.—On the 22nd October, 1781, the sessions ended at the Old Bailey, when seven convicts received sentence of death.

October 23.—Serjeant Edward Flowerdew was appointed a Baron of the Exchequer on the 23rd October, 1584. He enjoyed his dignity for less than eighteen months, for in March, 1586, an outbreak of gaol fever swept the assize court at Exeter and he was one of the victims, dying in the following month. He was buried in the church at Hethersett in Norfolk, the seat of his family.

October 24.—Two days after being discharged from the service of Mr. Peter Persode, John Brian broke into his house in St. James's Street, sfole money and valuables and set the place alight. Nothing could be saved, and after the fire was discovered the mansion burnt in a quarter of an hour. He was caught through trying to dispose of some of his spoils to a goldsmith. He said he had bought them from a strange man, but could give no proof, nor could he account for his movements on the night of the crime. He was indicted at the Old Bailey on the 16th October, 1707, found guilty, and condemned to death. He was executed in St. James's Street on the 24th October, before the house he had burnt, and afterwards hanged in chains near the Gravel Pits at Acton. He was of Swiss origin, having been born in the Canton of Berne, and he was twenty-four years old at the time of his death. He had been a servant at Geneva for four years, had made the tour of Italy with a gentleman of fortune, and in England had worked for several reputable families.

ROYAL CLAIMS.

His Honour Judge Tudor Rees, sitting at Epsom lately, showed but slight regard for the claims to diplomatic privilege and sovereign rights put forward on behalf of "Ladislav V, King of Poland," otherwise Count George Potocki (of Half Moon Cottage, Little Bookham) in the matter of a black-out summons. He refused to permit him to be represented by one styling himself a Knight of St. Stanislaus and Press Attaché to the Polish Court, and threatened a warrant for his arrest in case of failure of personal attendance. This peril to his person recalls the misfortunes of another very different monarch in exile, Theodore, King of Corsica, to whom the laws of England was not kind. Theodore von Neuhoff was of German extraction, French upbringing and cosmopolitan tastes. After a varied and adventurous career of military service and semi-diplomatic missions amid the mysterious undercurrents of European politics, he suddenly appeared in March, 1736, as saviour and King in the Island of Corsica then struggling to throw off the yoke of the Republic of Genoa. He was duly crowned, kept a decidedly theatrical royal state, exercised kingly functions, instituted a nobility and an order of knighthood and gained some success against the oppressor. But the inveterate feuds of his subjects and the non-arrival of the powerful foreign aid which he was always mysteriously promising soon broke down his influence, and in November he sailed off to look for the help that did not come. Brief reappearances in 1739 and 1743 gave him glimpses of his kingdom, but after that he saw it no more. He went to England, and for a while he was a lion in London society, but the glamour faded, and in 1750 he was arrested for debt and lodged in the King's Bench Prison. There he maintained a sort of burlesque state, and even knighted some of his visitors. His case attracted notice in the fashionable world, and it was determined to raise a subscription on his behalf, Horace Walpole penning a bantering appeal in which jest could hardly be distinguished from earnest. In the end his release came in 1755, by virtue of an Act for the Relief of Insolvent Debtors. In his schedule he was described as "a German from Westphalia," and his whole estates and effects were declared to be his title to the Kingdom of Corsica. On the 11th December, 1756, he died at the house of an obscure tailor in Little Chapel Street, Soho, and an opulent oilman, declaring that for once in his life he should like to have the honour of burying a king, paid for his funeral in the churchyard of St. Anne's.

Prisoners of War.—Facilities are available for the regular despatch of THE SOLICITORS' JOURNAL to prisoners of War in Germany. Full particulars can be obtained from the Publishers, THE SOLICITORS' JOURNAL, 29/31, Breams Buildings, London, E.C.4.

Obituary.

HIS HON. SIR THOMAS ARTEMUS JONES, K.C.

His Hon. Sir Thomas Artemus Jones, K.C., former County Court Judge of Circuit No. 29 (Caernarvonshire), and Chairman of Caernarvonshire Quarter Sessions (1938-39), died on Friday, 15th October, aged seventy-two. Before his call to the Bar by the Middle Temple in 1901 he had had considerable experience as a journalist, and was at one time on the Parliamentary staff of the *Daily Telegraph* and *Daily News*. He had previously been on the staff of the *Sunday Chronicle* at Manchester, against which newspaper he recovered substantial damages for libel in the well-known leading case of *Jones* v. *Hulton* [1910] A.C. 20; 54 SOL. J. 116 (H.L.). He took silk in 1919, and became a Bencher of his Inn in 1926. He was Lent Reader there in 1937. He became a County Court Judge in 1929, and received the honour of Knighthood the following year. He retired from the Bench last year.

MR. J. B. DAVIES, K.C.

Mr. John Bowen Davis, K.C., died recently, aged sixty-six. He was called to the Bar by the Middle Temple in 1898, and took silk in 1926. He was made a Bencher of his Inn in 1930. From 1933 to 1936 he was Recorder of Merthyr Tydfil, and since 1935 he had been stipendiary magistrate there.

MR. H. W. JACKSON.

Mr. Hugh William Jackson, solicitor, of Messrs. Sharman, Jackson & Archer, solicitors, of Wellingborough, died recently, aged sixty-five. He was admitted in 1902.

MR. R. J. M. STEDMAN.

Mr. Reginald John Mascall Stedman, solicitor, of Rochester, Kent, died on Sunday, 10th October. He was admitted in 1882, and was one of the oldest coroners in the country.

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

No. 1455/S.45. **Adoption of Children** (Transfer Abroad) (Form of Licence) (Scotland) Regulations, Sept. 24.

No. 1437. **Ancient Monuments** (Preservation Scheme Claim) Regulations, Oct. 1.

No. 1441/L.30. **Bankruptcy** (Amendment) Rules, Oct. 2.

E.P. 1452. **Breadboards** (Restriction on Use) Order, Oct. 6.

E.P. 1464. **British Seamen** (Offences in Foreign Countries) Order, Sept. 30.

E.P. 1337. **Building and Civil Engineering Labour** (Returns) Order, Sept. 16.

No. 1436. **Clearing Office** (Italy) Amendment Order, Oct. 8.

E.P. 1445. **Fish** (Distribution) (No. 2) Order, Oct. 5.

E.P. 1443. **Fur Apparel.** Order and Direction, Oct. 8, under the Consumer Rationing (Consolidation) Order, 1943, *re* Returns and Delivery of Coupons by Registered Manufacturers of Fur Apparel.

E.P. 1459/L.31. **Metropolitan Police Courts** (No. 4) Order, Oct. 7.

No. 1387. **Navy and Marines.** Pay, Pensions, etc. Order in Council, Sept. 24, sanctioning the grant of Discharge Gratuities to certain ratings on regular engagements.

No. 1456/S.46. **North of Scotland Hydro-Electric Board** (Borrowing) Regulations, Sept. 21.

No. 1365. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 14) Order, Sept. 28.

TREASURY.

Defence Regulations, Vol. II, 13th Edition, as amended up to and including 10 Aug., 1943.

WAR OFFICE.

Regulations for the Home Guard, 1942. Vol. I, Amendments 7, Sept., 1943.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

MICHAELMAS SITTINGS, 1943.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA	APPEAL COURT I.	Mr. Justice BENNETT
Monday, Oct. 25	Mr. Reader	Mr. Andrews	Mr. Jones
Tuesday, „ 26	Hay	Jones	Reader
Wednesday, „ 27	Harris	Reader	Hay
Thursday, „ 28	Blaker	Hay	Harris
Friday, „ 29	Andrews	Harris	Blaker
Saturday, „ 30	Jones	Blaker	Andrews

	GROUP A.		GROUP B.	
DATE	Mr. Justice SIMONDS *Non-Witness*	Mr. Justice COHEN *Witness*	Mr. Justice MORTON *Witness*	Mr. Justice UTHWATT *Non-Witness*
Monday, Oct. 25	Mr. Harris	Mr. Blaker	Mr. Reader	Mr. Hay
Tuesday, „ 26	Blaker	Andrews	Hay	Harris
Wednesday, „ 27	Andrews	Jones	Harris	Blaker
Thursday, „ 28	Jones	Reader	Blaker	Andrews
Friday, „ 29	Reader	Hay	Andrews	Jones
Saturday, „ 30	Hay	Harris	Jones	Reader

Notes of Cases.

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Mattouk *v.* **Massad.**

Lord Atkin, Lord Thankerton, Lord Porter, Lord Clauson and Sir George Rankin. 5th August, 1943.

West Africa—Master and servant—Seduction—Rape—Loss of service.

Appeal from a decision of the West African Court of Appeal reversing a decision of the Divisional Court for Ashanti of the Supreme Court of the Gold Coast awarding £2,000 damages to the plaintiff.

This action was brought by the plaintiff for the seduction of his daughter. She gave evidence that on two occasions the defendant had intercourse with her against her will, the result of the second intercourse being that she gave birth to a child on the 24th July, 1940. The plaintiff claimed damages for the expenses and loss of service consequent on the birth. The Divisional Court accepted the daughter's story and awarded to the plaintiff £2,000 damages. The defendant denied her story, which was without corroboration. The Court of Appeal held her story to be wholly incredible and entered judgment for the defendant. The plaintiff appealed.

LORD ATKIN, delivering the decision of the Board, said the Court of Appeal were judges of fact and were justified in refusing to accept the daughter's story, and their lordships were satisfied that the appeal should be dismissed. Both the trial judge and the Court of Appeal had attached importance to the difference between rape and intercourse with consent and appeared to incline to the view that proof of the former would not support an action for seduction. Their lordships wished to add that there appeared to be some misapprehension on this question. The father or master's cause of action was for loss of the girl's service, and it seemed illogical to suppose that he could recover if the girl yielded, but not if he lost the service because the girl was forced. The fact was that in the case of rape the master would have precisely the same action, basing it on the wrong done to his servant, as in the case of any other tort to the servant by which the master was deprived of her service. The action could be brought for seduction, whether based on the special wrong done to the master by persuading the girl to have intercourse or on the wrong done to the girl by the felony of rape by which the master suffered damage. It had been decided that the fact the wrong done to the servant was a felony had no bearing on the master's action (*Osborn* v. *Gillett*, L.R. 8 Ex. 88).

COUNSEL: *Rewcastle*, K.C., and *Valetta*; *Wallington*, K.C., and *Holroyd Pearce*.

SOLICITORS: *A. L. Bryden & Co.*; *Layton & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

COURT OF APPEAL.

Lord Forres *v.* **Scottish Flax Co., Ltd.**

Scott, MacKinnon and Goddard, L.JJ. 16th July, 1943.

Trade custom—Absence of standing market—Circumstances in which custom or usage can be set up.

Appeal from a decision by Atkinson, J., dealing with questions in a case stated by arbitrators.

The claim was by a farmer against manufacturers who agreed to buy the farmer's crop of flax by a written contract dated 26th March, 1940, by which the farmer undertook to put 10 acres under flax, the crop to be ultimately delivered in the dry state, free of expense, at the buyer's flax factory in Scotland. The weight delivered was to be "as taken at the time of delivery at the nearest weighbridge to the flax factory." Clause 5 (*f*) provided that sample plots, at least 5 per cent. of each crop, were to be taken by the manufacturers at random on delivery and separately stacked for processing to determine the seed and fibre content of the grower's whole crop. Clause 6 provided that the total tonnage of crop was to be credited to the grower's account at £6 5s. per ton where the average "yield of natural fibre" processed from the samples taken under cl. 5 (*f*) by a standard method was 10 per cent. of the crop weight. There was provision for a bonus for more than 10 per cent. and a deduction for less than 10 per cent. as ascertained. The arbitrators found that the expression "yield of natural fibre" had a particular significance at the date of the agreement, known to the trade of processers of flax, by which, according to their understanding, it would be confined to line fibre only. They further found that the claimant was not a member of the trade and did not at any material time know of such significance, nor had he at any material time any reason to suppose that the words bore any particular meaning beyond the natural meaning of the words of which it was composed.

SCOTT, L.J., said that a trade usage producing a customary meaning was a trade custom which had to be proved just as clearly and as definitely as any trade custom. The usage in question was found to have been known only to the purchasers. In a market where buyers and sellers met together habitually and got into the habit of assuming that certain conditions or usages applied to all contracts that they made, a usage grew up simply because everybody in the market, knowing the usages, tacitly assumed that the contract he was making, whether as buyer or as seller, was subject to the usage. In his lordship's view, the arbitrators' finding was not a finding of trade usage within the cases. The cases where a stranger might become bound by the usage of the market were different from the present and were of two kinds. The first was where a stranger went to a particular market as principal asking a member of the market to act as his agent, as on the Stock Exchange or the Liverpool Cotton Market (*Robinson* v. *Mollett* (1875), L.R. 7 H.L. 802). The second was where a stranger came to buy from or sell to a member of the market without the intervention of an agent who was a member of the market. No case, so far as his lordship remembered, decided that the stranger was bound by knowledge of or consent to all the terms of the market. That, however, was not this case, and here there was a definite finding that the trade significance of the expressions was known only to the processers, and there was no suggestion of the existence of a defined market. Another aspect was that there was no continuity of dealings subject to a usage to justify any finding of fact that the usage had become established and recognised. The natural construction of the words was that the average yield of natural fibre, whether long or short, line or tow, was to be paid for. The appeal would be dismissed.

MACKINNON and GODDARD, L.JJ., delivered concurring judgments.

COUNSEL: *C. T. Le Quesne*, K.C., and *J. A. Reed*; *Patrick A. Devlin*.

SOLICITORS: *Ernest G. Draper*; *Parker, Garrett & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re **Darby, deceased**; **Farrell** *v.* **Fargus.**

Morton, J. 20th July 1943.

Will—Advancement—Will executed before 1926—*Testatrix dies in* 1940—*Whether trusts of will "constituted or created" before* 1925—*Trustee Act*, 1925 (15 *Geo.* 5, *c.* 19), *s.* 32 (3).

Adjourned summons.

The testatrix by her will dated the 16th March, 1925, gave her residuary estate upon trust for her daughter during her life and after her death upon trust for her daughter's children who should attain twenty-one. The testatrix died on the 14th July, 1940. Her daughter had two children both under twenty-one years of age. This summons was taken out by the trustee of the will asking whether the statutory power of advancement given by s. 32 of the Trustee Act, 1925, could be exercised in favour of the infants. Subsection (3) of s. 32 provides: "This section does not apply to trusts constituted or created before the commencement of this Act."

MORTON, J., said the question was whether the trust was created on the 16th March, 1925, when the will was made, or on the 14th July, 1940, when the testatrix died. Until the decision in *In re Waring* [1942] 2 Ch. 426; 86 SOL. J. 310, it had been assumed that s. 32 applied where the testator died after the commencement of the Act, although he made his will before the Act. In that case the Court of Appeal came to the conclusion that the testamentary provision "was made" when the will was executed. There was a clear distinction between the question when a provision in a will "was made," and when a trust was "constituted or created." A will was an ambulatory document and no trust could be said to be "constituted or created" by it until the testator died. Accordingly, the death of the testatrix was the date when the trust was "created," and the trustee had a power of advancement under s. 32 of the Trustee Act, 1925.

COUNSEL: *Geoffrey Cross*; *Danckwerts*; *Hillaby*.

SOLICITORS: *Smith & Hudson*, for *Rollit, Farrell & Bladon*, Hull.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

The Law Society.

POST-WAR LEGAL WORK.

A comprehensive scheme of post-war aid has been adopted by The Law Society, in co-operation with the various Provincial Law Societies, with the object of effecting the speedy absorption into civil life of the 5,534 solicitors and 2,185 articled clerks now serving in H.M. Forces and the many others engaged in various other forms of war service.

It anticipates an expected rush of legal work after the war arising out of settlement of claims, administration and interpretation of new laws and regulations, and the sale and leasing of properties.

The scheme has three objects, namely:—

(1) To provide at the end of hostilities lectures and courses for the legal re-education of solicitors and articled clerks who have been out of touch with the law while on service;

(2) To find employment for qualified men as soon as possible after demobilisation; and

(3) In the meantime, to give those serving men who have time available all possible help to keep themselves up-to-date or continue their studies.

The plan has also been designed to fit in as closely as possible with Government projects, and the Council of The Law Society are now working in the closest co-operation with the War Office and other bodies concerned in providing courses in legal subjects for members of the Forces. Over 3,000 students have enrolled for these law courses.

The Admiralty, the War Office and the Air Ministry are providing facilities for articled clerks serving in the Forces abroad, who have the necessary time for study, to sit for The Law Society's Intermediate and Final Examinations, and the Society is to hold such examinations wherever there is a demand for them.

With regard to post-war employment, The Law Society has set up a special Post-War Aid Committee and a staff liaison department to bring ex-service solicitors into touch with prospective employers. As a preliminary step a questionnaire has been sent to all known serving solicitors to ascertain their post-war requirements. The object is to provide a central register and pool of information available in London. An essential feature of the scheme, however, is decentralisation of aid through the Provincial Law Societies, so that applicants who seek opportunities in particular localities may have the assistance offered by local organisation and contacts.

In every important centre a prominent local solicitor will officiate as "next friend" to the ex-service men seeking opportunities in that locality. He will be furnished, through the liaison department in London, with information concerning those who ask for help in his district, and he will

advise them in regard to facilities for continued education and training, refresher courses (which are being organised by the Legal Education Committee of The Law Society) and openings for employment and partnerships.

Meanwhile, the Post-War Aid Committee, realising the importance of ensuring that there shall be an adequate supply of trained young professional men to meet the anticipated post-war demand for qualified legal assistants in industry, commerce, central and local government, transport, financial and administrative services, is seeking the co-operation of all associations and bodies likely to be interested. Offers to place employers in contact with suitable candidates for employment have already been made to the—

County Councils Association
Association of Municipal Corporations
Urban District Councils Association
Rural District Councils Association
National Association of Local Government Officers
Society of Town Clerks
Society of Clerks of the Peace
Society of Clerks of Urban District Councils
Non-County Boroughs Association
Federation of British Industries
Association of Investment Trusts
Building Societies Association
British Insurance Association
British Bankers Association and other associations of banks

as well as to solicitors to leading transport and industrial concerns.

Parliamentary News.

HOUSE OF LORDS.

Price Control (Regulation and Disposal of Stocks) Bill [H.L.].
Read Second Time. [12th October.

HOUSE OF COMMONS.

Parliament (Elections and Meeting) Bill [H.C.].
Read First Time. [13th October.
Prolongation of Parliament Bill [H.C.].
Read First Time. [14th October.
Regency Bill [H.L.].
Read Second Time. [19th October.
Rent of Furnished Houses Control (Scotland) Bill [H.C.]
Read Second Time. [19th October.
Town and Country Planning (Interim Development) (Scotland) Bill [H.C.]
Read Third Time. [19th October.
Wage-Earners Income Tax Bill [H.C.].
Read Second Time. [14th October.

QUESTIONS TO MINISTERS.

Separated Wives and Court Conduct Money.

Mr. R. Taylor asked the Secretary of State for War whether he is aware that where a soldier has notified the Army authority that he and his wife have become estranged and the wife's allowances have accordingly been stopped the wife before she is able to obtain a court order must deposit the necessary money to enable her husband to attend court, and that this, after the allowance has ceased, is causing many cases of hardship; and whether he is prepared to discontinue this procedure.

Sir James Grigg: The provision that a wife must deposit conduct money when bringing an action for maintenance against her husband who is a soldier, is enacted by s. 145 (3) of the Army Act. The provision is necessary to protect the soldier against the expense of attending court in cases where his wife has applied for a summons without sufficient cause. It is hoped, however, to complete arrangements at an early date by which wives will be assisted to find the conduct money in cases where they are unable to provide it themselves and they are considered to have a good prima facie case against the soldier. [12th October.

Matrimonial Causes (Amendment) Rules.

Colonel A. Evans asked the Attorney-General why no explanatory memorandum was attached to the Matrimonial Causes (Amendment) (No. 2) Rules, 1943 (S.R. & O., 1325/L.25), in order that the effect of the changes should be clear without the necessity of studying two Acts of Parliament and one earlier Statutory Rule and Order.

The Attorney-General: The need for an explanatory note arises mainly in connection with subordinate legislation under the Emergency Powers (Defence) Acts. The Rules to which the hon. Member refers are not made under those Acts. They are Rules of Court, and so far the extension to Rules of Court of the practice of publishing explanatory notes has not been suggested, and I do not think that such an extension is necessary. These particular rules will be readily understood by the only people who will use them, namely, solicitors who act for petitioners in divorce cases, and in accordance with the usual practice they were published in the law papers. [13th October.

War Damage Claims.

Mr. McEntee asked the Financial Secretary to the Treasury whether he will make a statement in regard to the position of owners and owner occupiers of houses completely destroyed by enemy action, explaining on what conditions they are entitled to claim a cash settlement during the war; when no such settlement can be made whether they are entitled to have the amount of their claim determined so that they may know the amount to which they will become entitled; whether payments are to be made on the basis of pre-war prices or of the prices current when payment is made; and defining when payments will commence to be made.

Mr. Assheton: I assume that the hon. member is referring only to cases where a value payment is appropriate. Many houses of good quality are, however, likely to qualify for cost of works payments, even though they have been entirely destroyed. Where a value payment is appropriate a cash settlement will not normally be made during the war, although the Act provides for advances in certain special cases. I am informed by the War Damage Commission that the great majority of the owners of properties classified as total losses may expect to be informed of this classification before the end of 1943, and where they accept that classification they will be advised as soon as possible thereafter of the Commission's provisional estimate of the amount of the value payment. The War Damage Act provides that the amount of a value payment shall be ascertained by reference to values as at 31st March, 1939, though s. 11 of the Act gives the Treasury power to review this basis in the light of a report by the Commission when value payments generally become payable. In answer to the last part of the question, I would refer the hon. member to s. 22 of the War Damage Act, 1943, which lays down that value payments generally shall be made at "such time or times as may be specified in Regulations made by the Treasury either generally or as respects payments to be made in different circumstances." The time or times to be specified will depend on circumstances prevailing after the war and I am not in a position to anticipate what they will be. [13th October.

Pleas of Guilty.

Sir Leonard Lyle asked the Home Secretary whether, in view of the decision of his department that letters admitting an offence are not tantamount to a plea of guilty, he is satisfied that there is no unnecessary travel, waste of time or increase of costs involved in compelling the police court attendance of the persons concerned.

Mr. Herbert Morrison: A circular letter from my department to clerks to justices dated 13th May, 1943, of which I am sending a copy to my hon. friend, suggested to magistrates various ways in which economy in the time of the police and other witnesses might be effected within the framework of the existing law. The letter pointed out that a plea of guilty cannot be admitted by means of a letter to the court. This was not a decision of my department but a statement of the existing legal position. [14th October.

Notes and News.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. Charles Paley Scott, K.C., be appointed Recorder of Leeds in succession to Mr. Arthur Morley, K.C., who has resigned. Mr. Scott was called by the Inner Temple in 1906, and took silk in 1933.

The Lord Chancellor has appointed Mr. Eric Webb Jeffreys to be the Registrar of Peterborough County Court and District Registrar in the District Registry of the High Court of Justice in Peterborough as from the 11th October last. Mr. Jeffreys was admitted in 1919.

The Colonial Legal Service announce that Mr. H. A. O. O'Reilly, Attorney-General, Leeward Islands, has been appointed Puisne Judge, Windward and Leeward Islands. Mr. O'Reilly was called by Lincoln's Inn in 1924.

The Minister of Health (Mr. Ernest Brown) has appointed Major William Woolley, Liberal National Member for the Spen Valley, to be his Parliamentary Private Secretary., Colonel Frank Medlicott, who was previously the Minister's Parliamentary Private Secretary, has taken up a military appointment.

Notes.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26 Portland Place, W.1, on Thursday, 28th October, at 4.30 p.m., when a joint paper will be read by Dame Louise McIlroy, D.B.E., M.D., LL.D., D.Sc., F.R.C.P., F.R.C.O.G., and D. Harcourt Kitchin (Barrister-at-Law), on "Medico-Legal problems in the treatment of Venereal Diseases."

Commenting on the work of the Poor Persons Department, Hilbery, J., in the King's Bench Division, on Friday last, said: "It is sometimes thought by members of the public, who take advantage of this procedure, that solicitors and counsel are remunerated out of a fund. I wish them to disabuse their minds of that. When cases are undertaken by the Poor Persons Department, solicitors are good enough to give their professional services and time, and counsel equally give their services."

The dates of the Sessional Sittings for the jurisdiction of the Central Criminal Court for the ensuing year have been arranged as follows:—1943: 17th November; 7th December. 1944: 11th January; 8th February; 29th February; 22nd March; 26th April; 16th May; 27th June; 18th July; 12th September; 17th October. One hundred and forty-one persons are down for trial or sentence at the October Session, which opened on Tuesday last. This compares with 208 at the opening of the September Session.

Wills and Bequests.

Mr. Herbert Roper Barrett, solicitor, of Leadenhall Street, E.C., former chairman of the Lawn Tennis Association, left £14,761.

Mr. Harold Marson Farrer, solicitor, of Lincoln's Inn Fields, left £67,034, with net personalty £63,695.